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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,394

09/17/2003

Kurt-Reiner Geiss

7390-X03-018

4213

27317 7590 08/19/2008  
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EXAMINER

MAEWALL, SNIGDHA

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/665,394	<b>Applicant(s)</b> GEISS, KURT-REINER	
	<b>Examiner</b> Snigdha Maewall	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### Summary

1. Receipt of Applicant's arguments/Remarks and amended claims filed on 05/19/08 is acknowledged.

Claim 4 has been amended in this application.

Claims **1-13** are pending in this application and claims **1-13** will be prosecuted on the merits.

The rejections made under 35 USC 112.2 and 35 USC 103 have been withdrawn in view of Applicant's arguments. Further search prompted the following rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchholz et al. (US Patent No. 6,514,973) in view of Lang et al. (US Pub. No. 2003/0161861 A1).

Buchholz et al. discloses that the oral supplementation with 200 to 300 mg of phosphatidylserines per day for 2 to 6 months improves brain metabolism and benefits

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cognitive functions such as memory, thinking, learning, and the ability to concentrate especially in aging people and in patients with certain neurological and pathopsychological conditions (see column 2, lines 20-32). The reference also discloses the effectiveness of phosphatidylserines in the treatment of senile dementia, Parkinson's disease epilepsy, depression, and age-associated memory impairment has also been demonstrated in several studies. (see column 2, lines 27-30). Buchholz et al. further teach that phosphatidyl serine provides metabolic support to a wide range of brain functions. Phosphatidyl serine stimulates glucose metabolism in the brain and also increases the number of neurotransmitter receptor sites. (See column 2, lines 32-35). Buchholz et al. discloses that the disclosed compound (which includes phosphatidyl serine) are suitable for food or food supplement composition (see column 6, lines 55-56). The invention also relates to food or food supplement compositions comprising one or more active ingredients according to claim 1. (It is to be noted that claim 1 comprises phosphatidyl serine). The reference further discloses that food compositions comprise one or more active ingredients and one or more nutritional substances. The nutritional substances encompass all materials which are suited for consumption both by animals and/or by human beings, e.g. vitamins and provitamins thereof, fats, minerals or amino acids. Nutritional substances, which can be part of the inventive food compositions are e.g. materials, which are derived substantially from a single natural source such as sugar, unsweetened juice, nectar or puree from a single species of plant, such as unsweetened apple juice (including a blend of different varieties of apple juice), grapefruit juice, orange juice, apple sauce, apricot nectar, tomato juice, tomato sauce,

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tomato puree, grain plants of a single species and materials produced from grain plants of a single species, such as corn syrup, rye flour, wheat flour or oat bran. The food compositions are e.g. of food preparations such as breakfast foods, e.g. prepared cereals, toaster pastries, and breakfast drink mixes, infant formulas, dietary supplements, complete diet formulas, and weight-loss preparations, such as weight-loss drinks and weight-loss bars. The nutritional substances include all edible combinations of carbohydrates, lipids, proteins, inorganic elements, trace elements, vitamins, water, and active metabolites of plants and animals. (see column 5, lines 40-65 and column 6, lines 9-13). Buchholz et al. further teach that the specific dose of food or food supplement for each patient depends on a wide variety of factors, for example on the activity of the specific compounds employed, on the age, bodyweight, general state of health, sex, on the diet, the time and route of administration (see column 6, lines 45-50).

Although Buchholz et al. teach that phosphatidyl serine stimulates glucose metabolism in the brain and also increases the number of neurotransmitter receptor sites. (See column 2, lines 32-35), Buchholz et al. do not explicitly teach role of carbohydrate in improving cognitive function of brain.

Lang et al. discloses a cereal product comprising starch, which improves cognitive performances, in particular memory retention, attention concentration, vigilance and /or mental well being in people and particularly in a child and an adolescent. Table 1 on page 2 discloses a composition comprising spaghetti, kidney beans potatoes white bread and whole meal bread etc. Table 8 depicts carbohydrates, proteins and lipids.

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It would have been obvious to the one of ordinary skilled in the art at the time the invention was made to incorporate carbohydrates in the reference of Buchholz et al. since Lang et al. teach that food products containing carbohydrates such as starch improve cognitive performances. One skilled in the art would have been motivated to incorporate starch in the teachings of Buchholz because Buchholz teaches that Phosphatidyl serine stimulates glucose metabolism in the brain and also increases the number of neurotransmitter receptor sites. (See column 2, lines 32-35) and Lang et al. teaches that starch improves cognitive performances. Since starch is known to breakdown into glucose during metabolism, one skilled in the art would have reasonable expectation of success in combining starch as taught by Lang et al. and phosphatidylserine as taught by Buchholz et al. in improving cognitive performances.

With respect to various amounts and percentages of various components, it is the position of the examiner that optimization of such parameters would have been within the purview of a skilled artisan at the time the invention was made by doing experimental manipulations in the absence of superior and unexpected results. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235(CCPA 1955).

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Snigdha Maewall/

Examiner, Art Unit 1612

/Gollamudi S Kishore, Ph.D/

Primary Examiner, Art Unit 1612